

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING May 28, 2009

7:00 p.m.

in

Senior Center 806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Thomas Scott, Member

Mahmood Firouzbakht, Member

Slater Anderson, Member

Sean O'Grady, Zoning Specialist

REPORTERS, INC.

CAPTURING THE OFFICIAL RECORD

23 MERRYMOUNT ROAD, QUINCY, MA 02169

617.786.7783/FACSIMILE 617.786.7723

www.reportersinc.com

I N D E X

<u>CASE</u>		<u>PAGE</u>
9563	--	3
9651	--	9
9781	--	13
9766	--	21
9787	--	17
9788	--	19
9789	--	38
9790	--	66
9791	--	68
9792	--	101
9793	--	103

P R O C E E D I N G S

(7:05 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call the meeting to order. May 28th meeting of the Zoning Board of Appeals. And as is our practice, we'll start with the continued cases. And the first case we have is case No. 9563, 12 Shady Hill Square.

Is there anyone here on that case? Please come forward.

I think we have a letter in the file, which I presume you're going to confirm, requesting a continuance?

DENNIS TOWNLEY: Yes, we do confirm that.

SEAN O'GRADY: Nobody from the petitioner is here, right?

DENNIS TOWNLEY: We're Shady Hill

Square. We are the residents.

CONSTANTINE ALEXANDER: But you're all on the side of the Shady Hill Square folks?

JOHN MOORE: No, here's the line.

CONSTANTINE ALEXANDER: Thank you. Okay.

If you're going to speak, you're going to have to give your name and address and all that good stuff for the record or I can just read into the file your request. What would you prefer? Do you have anything you want to say beyond what's in here?

DENNIS TOWNLEY: Whatever is easier for you, Mr. Chairman.

CONSTANTINE ALEXANDER: The Chair notes that there is a record in the file on the letterhead from the law firm of Miyares M-i-y-a-r-e-s and Harrington. It's addressed to Mr. O'Grady.

"Enclosed is the parties joint

request for continuance of these two matters which are presently scheduled for a hearing May 28th."

And the Chair will note that there's a second continued case which we'll get to following this continued case.

And the joint request for continuance states that: "Given the possibility that these cases may be settled, the parties jointly request that the Board continue both cases until its meeting in September 2009." And the letter is signed by a number of petitioners starting with Judy Townley and also signed by Stonehouse Holdings, LLC.

The only question I have for you gentlemen, these cases have been continued for a very long time. And though we remember the cases more or less, not everybody else does. We think the case should be re-advertised. Also, one the cases, the one where I guess you folks are

the petitioners, the neighbors, are challenging the decision of the Building Inspector, that was a case heard. And, therefore, the five people who sat on the case when we first heard it, have to sit on the case when we finally decide, assuming you don't settle. One of the five members has left the Board. Another may be leaving the Board. And so, if we re-advertise, we can get a whole new panel for whoever will be sitting on the case that night. So it's our proposal -- I'm amenable of continuing the case until the first session in September as you request but on the condition that the case be re-advertised.

Comments? Problems?

DENNIS TOWNLEY: I think from --

CONSTANTINE ALEXANDER: Give your name for the record.

DENNIS TOWNLEY: Yes. Dennis Townley for the petitioner.

And from my perspective that sounds fine. I guess it might be helpful if some members of the current committee can serve on the new committee so that there's some continuity, but if that's not possible --

CONSTANTINE ALEXANDER: Most likely there will be some. Brendan and myself tend to sit most times and we were on the original case. So at least two of us. Tim?

TIM HUGHES: And I was, too.

CONSTANTINE ALEXANDER: Tim, too. So I think you'll have continuity, but not absolute continuity.

DENNIS TOWNLEY: Right. And as far as re-advertising is concerned, we have no objection to re-advertising.

DAVID PERRY: No, that's fine.

CONSTANTINE ALEXANDER: We'll take it one case at a time.

The Chair moves that in case No. 9563, the case be continued until --

what's the date, Sean?

SEAN O'GRADY: September 10th.

CONSTANTINE ALEXANDER: -- to September 10th at seven p.m. on the condition that -- you signed a waiver of notice? On the condition that the case be re-advertised for that date.

All in favor of granting the motion to continue on that basis?

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Case continues.

(Alexander, Hughes, Sullivan, Scott, Firouzbakht.)

(Whereupon, a discussion was held off the record.)

(7:10 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will now hear case No. 9651, 12 Shady Hill Square/Holden Street.

I assume these three gentlemen are here on this case, too?

DAVID PERRY: Yes.

CONSTANTINE ALEXANDER: You're the petitioner on that case.

DAVID PERRY: Right.

CONSTANTINE ALEXANDER: Okay. I have to read into the record again just in case. It's a different case.

We have a letter in the file on the

letterhead of the law firm of my Miyares M-i-y-a-r-e-s and Harrington saying:

"Enclosed is a joint request of continuance of these two matters which is presently scheduled for the hearing next Thursday, May 28th." And the joint continuance request says that: "Given the possibility that these cases may be settled, the parties jointly request that the Board continue both cases until its meeting of September 2009."

And, again, I think we have no problem with continuing the case until that time. At least we'll put it to the vote. But I would do on the motion that you re-advertise the case. This was a case that was not heard.

DAVID PERRY: Right.

CONSTANTINE ALEXANDER: So you don't have the same problem that you have in your case. So whoever shows up in September, but again, I think some of the

people who are familiar with the case would like to sit.

Do you have any objection?

DAVID PERRY: No, that's fine.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued until September --

SEAN O'GRADY: 10th.

CONSTANTINE ALEXANDER: --
September 10th at seven p.m. on the condition that the case be re-advertised.

All in favor.

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Motion carries. Both cases continued.

(Alexander, Hughes, Sullivan, Scott, Firouzbakht.)

JOHN MOORE: Can I ask when the advertising is set out, 60 days ahead or....

SEAN O'GRADY: Yes. We'll figure

it out and we'll get in touch with you. I imagine that we'll probably just do it right away.

JOHN MOORE: Oh, really? Okay.

SEAN O'GRADY: And then -- well, maybe we won't.

CONSTANTINE ALEXANDER: I think you want to go closer to September.

JOHN MOORE: I want to avoid it if we're successful.

CONSTANTINE ALEXANDER: If you can settle the case, we'll all be very happy.

Thank you.

(Whereupon, a discussion was held off the record.)

(7:15 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call a continued case, case No. 9781, 279 Huron Avenue.

Someone here on that case?

JOE RONAYNE: That's me.

CONSTANTINE ALEXANDER: Your name for the record.

JOE RONAYNE: Sure. It's Joe.
And my last name is Ronayne,

R-o-n-a-y-n-e.

CONSTANTINE ALEXANDER: And we have a letter in the file from you requesting a further continuance of this case?

JOE RONAYNE: Right.

CONSTANTINE ALEXANDER: And you want it continued until June 25th if possible?

JOE RONAYNE: Please.

CONSTANTINE ALEXANDER: Is that possible?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: The Chair moves that case No. 9781 be continued until seven p.m. on June 25th on the condition that the sign you have outside the house, change the date on it one more time.

JOE RONAYNE: Right. Just with a marker, right?

CONSTANTINE ALEXANDER: Correct,

with a marker.

JOE RONAYNE: Terrific.

CONSTANTINE ALEXANDER: And we have a waiver of notice already in the file.

SEAN O'GRADY: Let me double check. Do you now have two signs on your house?

JOE RONAYNE: We do. We have one for each case number.

SEAN O'GRADY: Okay. The original case, do you remember why you had to re-advertise?

JOE RONAYNE: What ultimately happened is our architect helped us apply and when she submitted the form, she had missed the Special Permit section for covering the porch in the back.

SEAN O'GRADY: Okay. So, you're actually going to do both of these cases?

JOE RONAYNE: Ideally if we could, right.

CONSTANTINE ALEXANDER: The continued case is a variance, and the one we're going to hear and continue tonight is a Special Permit.

JOE RONAYNE: Right.

SEAN O'GRADY: So both signs have to stay and both signs will have to be changed.

JOE RONAYNE: Terrific. Okay.

CONSTANTINE ALEXANDER: Now, you signed a waiver of notice for this case. Have you signed a waiver of notice in advance for the one that's going to come up so you don't have to stick around for the 20 minutes?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: You have a waiver?

SEAN O'GRADY: Yes. I have a waiver for both.

CONSTANTINE ALEXANDER: I don't think we've taken the vote yet.

TIM HUGHES: I don't remember saying anything.

CONSTANTINE ALEXANDER: Okay. I don't remember saying anything. All right, just in case.

The Chair moves that the case at 279 -- I did make that motion about changing the sign.

SEAN O'GRADY: Yes, that's right.

(Whereupon, a discussion was held off the record.)

(7:40 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9787, 279 Huron Avenue.

Is there anyone here on that case?

(No response.)

CONSTANTINE ALEXANDER: No one seems to be here.

We have a letter in the file from the petitioners. Mireya, M-i-r-e-y-a Nadel, N-a-d-e-l. And Joe Ronayne, R-o-y-a-n-e.

"Dear Board, I am requesting to have the following cases continued." And one of the cases he cites is the one I just called. "I am requesting it to be continued to June 25th if possible. Thank you very much."

Is June 25th possible?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: The Chair moves that -- and the Chair notes that the waiver of notice of the time for a decision is in the file.

So the Chair moves that this case be continued until June 25th at seven p.m. on

the condition that the petitioner change the posting, the sign noting the time of the hearing.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion carried.

(Alexander, Hughes, Sullivan, Scott, Firouzbakht.)

(Whereupon, a discussion was held off the record.)

(7:45 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9788, 56 Fayerweather Street.

Is there anybody here on that matter?

ROBERT PALADINO: I am.

CONSTANTINE ALEXANDER: Please come forward. Sit down, state your name and address for the record, please, we're keeping a transcript.

ROBERT PALADINO: My name is Bob Paladino. I'm an architect at Mellowes and Paladino in Boston, State Street in Boston.

CONSTANTINE ALEXANDER: And you were here on behalf of the petitioner?

ROBERT PALADINO: On behalf of the -- Rob Whitman and Jeff Munger who are the residents at 56 Fayerweather.

CONSTANTINE ALEXANDER: Before we get into the merits of the case -- we actually have two cases. Originally they

filed for a Special Permit, and I guess it was determined subsequently that the case is not appropriate for a Special Permit but it should have been a variance, and that's the case that's been advertised for tonight.

ROBERT PALADINO: Right, right.
The variance.

CONSTANTINE ALEXANDER: But I need -- I want confirmation that the petitioner is withdrawing the Special Permit application.

ROBERT PALADINO: Yes.

CONSTANTINE ALEXANDER: Okay.

ROBERT PALADINO: Yes.

CONSTANTINE ALEXANDER: If Special Permit doesn't do it for you in terms of relief --

ROBERT PALADINO: No, we need a variance.

CONSTANTINE ALEXANDER: So let me make a motion on that.

The Chair moves that case No. 9766 for the premises at 56 Fayerweather Street seeking a Special Permit be withdrawn.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five if favor.

(Alexander, Hughes, Sullivan, Scott, Firouzbakht.)

CONSTANTINE ALEXANDER: Now, we'll take the case for tonight, the variance case. And you've already given your name and particulars so the floor is yours.

ROBERT PALADINO: Thanks.

I think you've been given some letters from the neighbors. There's a fourth one that arrived today that I'd like to give you. And I also have some other documentation here that might be useful, which is a plan which shows -- I'm sorry, I only brought one copy, but there's a -- the dashed section shows the

existing deck superimposed on the proposed deck. And then I have a couple of photographs of the site.

CONSTANTINE ALEXANDER: This would have been useful to be in the file before the hearing. It's something I noticed really was sort of missing from the file. I'll pass that around.

ROBERT PALADINO: Sorry about that.

And here are some photographs of the site. And if anyone's interested, a survey that shows the relationship of the new deck to the side yard setback.

CONSTANTINE ALEXANDER: Okay. While they're passing around, members of the Board are trying to read as you talk, tell us specifically what relief you're seeking and what your problems are.

ROBERT PALADINO: We have a -- we started out with a non-conforming site. We are adding --

CONSTANTINE ALEXANDER: A
non-conforming structure?

ROBERT PALADINO: Non-conforming structure. I'm sorry about that. And we are adding a -- the clients who have owned this house for about 15 years moved to New York a couple of years ago. They're both retiring. In fact, one is already retiring. They're moving back to Cambridge. And they wanted to do something to their property to improve it so they can retire there. One of the issues in their yard is that there's an eight and a half foot drop between their kitchen, their main level. The grade drops quite a bit from the front of the street to the back of the house. So they need -- it's hard for them to get -- it's getting harder as they get older to get down to the eight and a half feet to the rear yard. And you can see it in these photographs how severe that grade change

is. And so what we've done is we've added -- although this is not part of what we're talking about now, in adding a bay in the sun room at the back of their -- at the rear of their house, it impinged quite a lot on the existing deck. And we tried to enlarge the deck. And in doing so, we cantilevered it out three feet towards the side yard setback.

CONSTANTINE ALEXANDER: Just to be technical about this. The relief you're seeking only relates to a left side yard?

ROBERT PALADINO: That's exactly right, yes.

CONSTANTINE ALEXANDER: And right now the structure is 12.7 --

ROBERT PALADINO: Right.

CONSTANTINE ALEXANDER: -- 12 feet, seven inches from the side line.

ROBERT PALADINO: Exactly.

CONSTANTINE ALEXANDER: It's supposed to be 15.

ROBERT PALADINO: Right.

CONSTANTINE ALEXANDER: It's non-conforming. And you want to reduce it further by three feet. So now the --

ROBERT PALADINO: Night-foot, seven.

CONSTANTINE ALEXANDER: Nine-foot, seven.

ROBERT PALADINO: Yes.

CONSTANTINE ALEXANDER: And a 15 rear --

ROBERT PALADINO: Yes.

CONSTANTINE ALEXANDER: That's the nature of the relief?

ROBERT PALADINO: That's the nature of the relief.

CONSTANTINE ALEXANDER: Okay.

ROBERT PALADINO: I mean, they've notified all their neighbors as you'll see in these letters. And I think, I think that it -- there are no issues with FAR. This is the only thing, is a side yard

setback. It doesn't do anything to -- we're not changing the use of the deck in any way, and we are not -- there's nothing that would be detrimental to the neighborhood or the area. And so, what this does is it really gives them an opportunity to enjoy their backyard and open up the back of their house to their yard. And then so as a result, we're asking for relief on that basis.

BRENDAN SULLIVAN: What's driving this is the bay window?

ROBERT PALADINO: The bay window.

BRENDAN SULLIVAN: And the reason to -- there's existing windows there now. The reason to make it a bay, what's the reason?

ROBERT PALADINO: Well, the room is very thin. It's about eight feet wide. It's sort of a useless room if you're there. It's neither here nor there. And it's hard to put any furniture in it.

It's hard to sit in it and enjoy it as a space. And they have a really beautiful backyard. And so, by adding that bay, it really actually changes it. It transforms it into a room that you can actually use. We can put some chairs or something in that bay, and there will be a desk -- I'm showing a desk along one of these walls here. And so it actually becomes a space that becomes quite pleasant. And so it seems like it just -- it's something that they --

BRENDAN SULLIVAN: It's facing sort of somewhat east, southeast or so.

ROBERT PALADINO: Yeah.

CONSTANTINE ALEXANDER: To follow up on Mr. Sullivan's question, probably asking the same question, is that the reason why you just continued the deck along the same side of the house? In other words, you're moving the deck so it's closer to the lot line.

ROBERT PALADINO: Yeah. I --

CONSTANTINE ALEXANDER: And you go straight and keep the side of the house straight and move the deck a little bit off to the left. Why did you do that?

ROBERT PALADINO: Well, I guess I could have -- I didn't want to extend the deck too far into the backyard. That's one choice I could have made. And --

CONSTANTINE ALEXANDER: They have a great, big backyard.

ROBERT PALADINO: They do have a big backyard.

CONSTANTINE ALEXANDER: It's only a couple feet.

ROBERT PALADINO: They do have a big backyard, yes.

There's a lot of very nice planting, mature planting that they've done over time. And it really begins to change that for what that's worth. The space just -- I mean, from an architectural point of

view, from a spatial point of view, it just seemed rather than have a long, linear space, to have a more -- a square space that would allow them to have a table, some chairs and stuff like that, it would seem from a design point of view made more sense.

THOMAS SCOTT: So, are you reconstructing the deck that's there?

ROBERT PALADINO: The deck is being completely removed and rebuilt.

THOMAS SCOTT: Removed and reconstructed?

ROBERT PALADINO: And rebuilt, yes.

THOMAS SCOTT: What about the stair configuration similar the way --

ROBERT PALADINO: It's just pushed out a little bit.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

Is there anyone here who wishes to

be heard on the case?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

We do have some letters in the file which I'll read into the record.

There's a letter addressed to the Board from -- first name, I'll just spell T-a-d-h-g, Tadhg Sweeney. It says: To the Board of Zoning Appeals, Tadhg Sweeney is a resident of 54 Fayerweather Street, Cambridge, wishes to express their support for the application of Rob Whitman and Jeff Munger for a variance to do some work to the exterior of 56 Fayerweather Street. Since the structure and lot at 54-56 are pre-existing and non-conforming, the proposed decrease of the side yard setback to nine-feet, six inches and proposed increase of the FAR to .57 should be granted since they will provide desirable relief without substantial detriment to

the public good and without substantially derogating from the intent or purpose of the ordinance.

And then there's a reference to a BZA decision filed for 54 Fayerweather on 9/12/03. So apparently the people next-door -- these are the people most directly affected?

ROBERT PALADINO: The houses are connected. There are two houses there.

THOMAS SCOTT: So, they're not the people on the left side?

ROBERT PALADINO: No, they aren't.

THOMAS SCOTT: They're the people on the other side? Is there a letter in the from the house here?

ROBERT PALADINO: As you'll read them I'll tell you.

CONSTANTINE ALEXANDER: Okay. This is a duplicate. This is the same letter.

There's a letter of support from --

some of these letters are addressed to the petitioner and they were given to us.

ROBERT PALADINO: Yes, they were e-mailed to them.

CONSTANTINE ALEXANDER: Lair Dubak D-u-b-a-k. It says, "We have seen the proposed work at 56 Fayerweather Street and we have no objections to the proposed change." I don't have an address for Mr. Dubak. So I don't know if that's --

ROBERT PALADINO: No, that is not the next one.

CONSTANTINE ALEXANDER: There's a letter from Meredith Friedman, F-r-i-e-d-m-a-n. It says basically, "Sounds like a grand plan. We are all for it."

ROBERT PALADINO: Is that the second page of the -- is that a set --

CONSTANTINE ALEXANDER: It's a separate e-mail.

ROBERT PALADINO: It's the one

from -- the clients are in Mexico at the moment. I think they say Hello from Mexico.

CONSTANTINE ALEXANDER: Yes.
Right.

From Jane Rabb, R-a-b-b. Basically she writes from Northern Mexico to express her enthusiasm about what you and Jeff are doing. She's thrilled. Your plans sound wonderful. Characteristically tasteful. I look forward to seeing you enjoying your own back deck or in your lovely garden sooner rather than later. Meanwhile, I continue enjoy the garden view from my house.

And the Chair notes her house is in Northern Mexico. Okay. That's a letter in support. And that's the one who's most directly affected?

ROBERT PALADINO: Yes.

CONSTANTINE ALEXANDER: That's it.
Comments from the members of the

Board? Starting with Brendan, anything?

BRENDAN SULLIVAN: I think from the street you're really not going to see it. I suspect that to push it further back becomes -- I don't know bowling alley, it becomes long in length. I don't think it works. And I think square -- and I suspect it will be filled with plantings and the like. I think it's an acceptable space. If the neighbors have no problem. If the neighbors have no problem. I can't see it from my house, and somebody can see it from Northern Mexico, then that's all right.

CONSTANTINE ALEXANDER: Tom?

THOMAS SCOTT: Yes, I guess I'm -- I wasn't in favor of kind of encroaching on that side of the setback, and thought that it could go back into the yard and give the same effect, although there's that pretty nice planting bed that's right there and kind of preventing it from going

forward. So I guess that would have to all be torn up if you were to stay within the footprint. At least the side setback that is currently there. So I guess given some of the restraints, that I guess I'd be in favor of it.

CONSTANTINE ALEXANDER: Mahmood?

MAHMOOD FIROUZBAKHT: It seems like an appropriate design and given the abutting neighbor is supportive, so I'm for it.

CONSTANTINE ALEXANDER: Tim?

TIM HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: And I have nothing to add to what everybody else has said. I agree with everything that's been said.

So, the Chair will make a motion. The Chair moves that a variance be granted to the petitioner to enlarge the rear deck on the grounds that a literal enforcement of the provisions of the ordinance would

involve a substantial hardship to the petitioner. Hardship being that it would be difficult to maintain the plantings on this non-conforming structure if you had to comply with the dimensional requirements of the ordinance.

That the hardship is owing to topography of the land. As the petitioner has pointed out, the land has a significant drop in the backyard requiring a rear deck of the kind that's being proposed here.

And desirable relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the ordinance.

That being so, because the relief being sought is quite modest. There is unanimous neighborhood support, including support from the neighbor most directly affected by the encroachment into the side

yard.

The nature of the relief is very modest in nature. It's only a left yard setback to the extent it's three feet. Generally, and let me stop right there.

What are the plans? We tie our decisions to plans. I don't know if I have the exact plans that you want in the file.

ROBERT PALADINO: Can I give you -- would you like this set? Or a sheet of this set?

CONSTANTINE ALEXANDER: I would like a set that we can put in the file and Mr. O'Grady can use.

ROBERT PALADINO: You can take this.

CONSTANTINE ALEXANDER: Okay. These are the ones that have been sort of --

ROBERT PALADINO: Yeah. These are the formal.

CONSTANTINE ALEXANDER: On the condition -- back to the motion. On the condition that the work proceed in accordance with the plans prepared by architects Mellowes, M-e-l-l-o-w-e-s and Paladino in Boston. They're plans numbered A1, A3, A4, A4.1, A5, A6, A7, A8, A9, A10, A11, A12, E1 and S1. And with the first page initialed by the Chair.

All those in favor of granting the variance on the basis of the motion, just made, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Scott, Firouzbakht.)

(Whereupon, a discussion was held off the record.)

(8:00 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9789, 2447 Massachusetts Avenue.

Anyone here wishing to be heard on that case?

ROBERT HARRIS: Yes, I am.

CONSTANTINE ALEXANDER: Now your's moment. And for the record.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, Members of the Board. For the record, James Rafferty on behalf of the applicant. Adams and Rafferty 130 Bishop Allen Drive in

Cambridge. Seated to my right Mr. Robert Harris, H-a-r-r-i-s. Mr. Harris is the proprietor of Season to Taste Catering and he is looking to be able to locate his business in this storefront on Mass. Avenue in North Cambridge.

CONSTANTINE ALEXANDER: Just the -- you know I'm anal about these things. What exactly is the nature -- I know you need a use variance.

ATTORNEY JAMES RAFFERTY: Uh-huh.

CONSTANTINE ALEXANDER: And what other variances do you need? Do you have a parking issue? You know, size is in your advertisement.

ATTORNEY JAMES RAFFERTY: We did cite it because we looked -- I really cited it for the loading requirement not so much the parking. It would appear that the building, that the prior use, that this building would qualify under the provision of Article 6 that said you don't

need to have more parking than what the prior use would have required. And the prior use here was a Mexican fast food restaurant. But there is a loading requirement that's required here. So I did cite it to be certain that we -- to the extent that there was a determination that there was a loading requirement associated with this use that wasn't associated with the prior use. That we would get that relief as well.

CONSTANTINE ALEXANDER: Why don't we proceed on the assumption that you do need a variance for the loading requirement.

ATTORNEY JAMES RAFFERTY: Oh, I believe we do. It says parking and loading, yes. That's why it's listed, right.

CONSTANTINE ALEXANDER: Your petition says that what you want to do is operate a catering business with accessory

dining. Just explain what that accessory dining is.

ATTORNEY JAMES RAFFERTY: Sure.

Mr. Harris operates Season to Taste Catering, and I brought a menu just to familiarize the Board a little bit with his business. And really what he's looking to do, and the floor plan helps, I think illustrate the concept here.

Mr. Harris has been operating for about four years now in a bakery in Central Square, the Mariposa Bakery. He uses their kitchen facilities to prepare his food. And what he wants to do is to be able to create a setting where perspective customers -- and he does a high percentage of weddings and catered affairs. So he would meet with customers in a setting where they could sample the food. So he'd like to have a tasting menu. He would like to perhaps allow a perspective bride and her significant other to come in and

sample -- see the table settings, see everything. So you'll see he's identified in there where he wants to have a table.

CONSTANTINE ALEXANDER: If I -- I'm not getting married, and I wanted to have dinner one night, can I walk into your place and have a dinner?

ATTORNEY JAMES RAFFERTY: Well, that isn't part of the current business plan. But a restaurant use is an allowed use here. And I appreciate to take the opportunity to have an airing of this issue on the record. So, we wouldn't take the position that the granting of the catering would somehow trump whatever underlying as of right zoning opportunities existed for a restaurant. I think what Mr. Harris has said to his neighbors and some people in the community is that he would like to envision a time at some point in the future where he might operate -- more of a private dining where

you could rent out the table, you could rent out the room, and he would serve you a meal. I think his current business model doesn't anticipate a restaurant per se. He would need a license from the License Commission to do that. A common victualer license if he wanted to serve alcohol. He would need a liquor license to do that as well. And that's not part of his near term ambition. But --

CONSTANTINE ALEXANDER: Would he not also need relief for parking? He has a restaurant as opposed to --

ATTORNEY JAMES RAFFERTY: If he has less than 20 seats he wouldn't. Okay? Because the small business exception under Article 6 for less than 20 -- the first four spaces would be waived. So -- but at any rate we're not looking to advantage him for a restaurant. He would have to satisfy whatever requirements exist under the base zoning and other licensing

requirements for a restaurant. But I wouldn't want to create a scenario where if at some point in time he sought to have certain dining aspects, have people come in and actually consume food on the premises, I would thought it would be helpful not to have a conflict in the decision that would suggest well, you were approved for a caterer and, therefore, we're not sure you can also be a restaurant. So the plan, the operation plan and the reason for the relief, as you know, restaurant uses are permitted as of right. And in fact in this case as I noted there, prior Board granted a fast food variance, not even Special Permit, but a variance for a Mexican restaurant. So that variance is currently with the property. And it was activated so it hasn't gone away in the sense that there wouldn't be a lapse of that variance or abandonment because non-conforming uses

would remain in effect. So that variance is with the property but it doesn't allow Mr. Harris to operate his business. And his business frankly is a little hard to fit into those round holes in the table of uses. He's a bit of a square peg. And I spent sometime with Mr. O'Grady and his colleague trying to make certain what could happen. There is an exemption under retail bakeries where you can have a portion of it be catering, and that's essentially the status that he has at Mariposas. You know, one of the things I advised him is could you have some retail elements to your operation and sell some baked goods, and therefore you can come in as of right? Because time is of the essence here. He's already began paying rent and is eager to make this a success.

He lives on Newman Street, a block or two away from the premises. But upon, you know, full examination that isn't what

he operates in. He wouldn't want to create incorrect expectation or impression of what the business is. The business really is a catering. But it's one step above or I shouldn't say more than one, but it's a bit beyond a typical caterer. It's a catering but also to have a setting to not only prepare the food, but also to experience the food, to taste the food. And the idea in the plan he has is that people walking by can in fact -- will be able to look inside and see people working and preparing food. Most of the activities, as you might expect, tend to be later in the week. Events are primarily weekend style events, so it's likely to be a little quieter in the early part of the week. But it really is a concept that's been met with great enthusiasm. He was at the North Cambridge Stabilization Committee last night, and Mr. Clary has sent an e-mail expressing

support, which I know is in the file. I know the Planning Board was quite supportive of it. And it is one of those uses if you look at the Business A-2 permitted uses, a funeral home, a mortuary can go in as of right. A printing shop can go in as of right. So, where does the caterer fall in the gambit of that in terms of its impact upon surrounding uses. Fast food use can continue there today with arguably a lot more impact in terms of traffic and parking and associated volume. So it feels given the -- frankly, the current status of retail life in Northern Mass. Ave. is not all that strong, and we've heard that from many people that have heard about this, and the notion that this could morph into something even more than simply catering, I think has also enjoyed great appeal with nearby neighbors and abutters. So it's for that reason that identified this site

and is seeking the relief for the variance to allow for his use to operate here.

CONSTANTINE ALEXANDER: We granted the variance for this fast food enterprise, the Mexican restaurant, there was a condition about parking for delivery vans which made me think what kind of deliveries are you going to have in terms of, you know, raw materials for your catering business? Should we be concerned about parking?

ROBERT HARRIS: Well, I live a block away or a block and a half away, and I actually -- my business is small enough that I rent vans as I need them. So there won't be a van parked there during the week. And the landlord has been kind enough to allow me to use his driveway, which is directly behind the building, to load in and out. And during a Friday, usually it's Friday mornings is when -- because I go to the farms to pick

everything up, and it gets loaded in and prepped and then stored overnight and then loaded out Saturday morning. So that's my plan.

THOMAS SCOTT: So all the loading will occur from behind the -- no loading up the front door or anything like that?

ROBERT HARRIS: My intent is to do that, yeah, exactly.

CONSTANTINE ALEXANDER: What are the hours of operation since you're not like a regular restaurant? Are you cooking late at night?

ROBERT HARRIS: Well, the cooking goes on actually at -- most of the cooking goes on at the event. So, we will be there in the afternoon and the early evening. Early in the week, the way my schedule works, is Monday through Thursday it's by appointment with clients. It's a place for my office and to meet with them and perhaps do a tasting. And then we

will be coming in in the evening after the events and, you know, taking everything in and cleaning it off and stuff. And our intent is to be at least disruptive as possible and to be as low impact as possible.

CONSTANTINE ALEXANDER: How many employees do you have?

ROBERT HARRIS: I have about eight cooks and I have about 30 servers. And they are all on call. They don't -- only the cooks --

CONSTANTINE ALEXANDER: I was thinking specifically in terms of late at night, you finish the wedding, you come back, how many people are going to be coming back?

ROBERT HARRIS: It's going to be myself and about four or five people.

CONSTANTINE ALEXANDER: Other questions from members of the Board?

BRENDAN SULLIVAN: I'm just

thinking that you would be meeting clients obviously probably at night after six o'clock or something when --

ROBERT HARRIS: Yes.

BRENDAN SULLIVAN: And that probably goes on for like an hour or something. So, you know, you're probably not going to be there ten, eleven o'clock at night during the beginning part of the week or something?

ROBERT HARRIS: No, no.

BRENDAN SULLIVAN: Then, if I understand it right, then on Friday is when you sort of start kicking it into high gear.

ROBERT HARRIS: Exactly.

BRENDAN SULLIVAN: And as you're bringing food stuff in to prepare it, to then take it to a venue to heat, cook it.

ROBERT HARRIS: Exactly.

BRENDAN SULLIVAN: And then after the event you sort of bring back the empty

pots and pans and all that other stuff and sort of drop it and clean it.

ROBERT HARRIS: Yes.

BRENDAN SULLIVAN: And go on your way. And the next day you come in and tidy things up and clean and so on and so forth.

ROBERT HARRIS: Yes.

BRENDAN SULLIVAN: So it's a sporadic activity that sort of has low spots and high spots.

ROBERT HARRIS: Indeed, yes.

THOMAS SCOTT: How would you handle food waste? Because I see that there potentially could be a lot of food waste. Is that containerized in some way?

ROBERT HARRIS: Absolutely. We -- the focus of my business is to store as much -- as many ingredients as I can to the place. And I have relationships with farmers. And my intent is to have as little waste as possible. To have actual

sealed compost, recycling and then trash. And my intent is in the early in the week is to have either the farmer pick up the compost or take it to the farm. I plan to be very meticulous about the trash. And in the restaurant business if you go look at someone's trash or you look at the bathroom, it tells you a lot about their business. And I intend to keep it very neat and organized.

THOMAS SCOTT: Will that all be stored outside where the trash --

ROBERT HARRIS: Exactly.

CONSTANTINE ALEXANDER: Outside?

ROBERT HARRIS: Yes.

CONSTANTINE ALEXANDER: What precautions -- is there a shed or something to keep rodents from overturning the barrels?

ROBERT HARRIS: It will be in a sealed -- one of those rolling sealed containers. As far as the compost goes,

that is going to be in a heavy plastic box that will be completely sealed. I've worked in Cambridge for ten years, I know about the rodents. And it's a two-prong approach of cutting off the food supply and being neat and not allowing them any food. And then hiring an exterminator to come in and do what they do professionally.

ATTORNEY JAMES RAFFERTY: There's a history of food use at the property. The abutting business is a -- Marco's is a food operation. And there has been a restaurant here. So I think the expectation is there would be no real difference in food waste impact then as of right.

CONSTANTINE ALEXANDER: Maybe in terms of quantity that's all. I suspect you're going to be producing more cooking, more food products than Marco's?

ATTORNEY JAMES RAFFERTY: Well, I

don't know if you stretch it out over a seven day period that might not be the case. There's only generally one or two events per week. But I don't know the volume that the Mexican restaurant was doing, but it was open seven days a week.

BRENDAN SULLIVAN: Is there a ventilation system in place there now for the cooking?

ROBERT HARRIS: Currently -- there was a hood built into the place. And then when he closed, he took it. So right now there's just a plug where the ventilation went.

BRENDAN SULLIVAN: Okay. I guess what I'm leaning to is the controlling of the -- what your emitting, that's all.

ROBERT HARRIS: Oh, yes.

BRENDAN SULLIVAN: And I don't know, Sean, is there an ordinance? There has to be some ordinance for something. There's an ordinance for everything in the

city.

SEAN O'GRADY: Oh, yes, he's going to have to follow the sanitary rules.

CONSTANTINE ALEXANDER: Some years ago when Marino's was in operation, which is only about a block or so down the street. There was a lot of controversy with the neighbors about the odors that the restaurant -- Marino wanted to put the restaurant in, about befouling the neighborhood with cooking oils. I guess they resolved that because Marino's opened up his restaurant. I don't know how they resolved it. Maybe you do.

ATTORNEY JAMES RAFFERTY: I do. It was a very specific concern and it happened after the restaurant opened that's because Mr. Marino favored a wood burning oven in the -- what was emanating from the wood burning oven by way of emissions was a lot more than was typically associated with the restaurant

use. So he was required, as a condition of his license, to put the scrubbers atop the ventilating equipment to treat the material. They literally were having ash and other things come out of it. So, it was largely related to the nature of the cooking, the wood burning stove. It was a source of controversy for several months. And he was convinced -- he was very set and wanted that concept. So the scrubbers were the anecdote, and I guess one could discuss whether it was successful or not. At the end of the day, it became a requirement of his license because there was so many complaints associated with it.

But, again, we're in a zoning district where restaurant uses are as of right, and I don't think there's any reason to conclude that this particular use would have any different impacts, at least from a sanitary or odor perspective, then an as of right restaurant might

generate.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

Anyone here wishing to be heard?

Please come forward.

KATIE DORMAN: My name is Katie Dorman.

CONSTANTINE ALEXANDER: We keep a transcript. Spell your name and address for us.

KATIE DORMAN: My name is Katie Dorman, I live at 2440 Mass. Ave. I'm across the street. I just want to come and give my support for Mr. Harris for his business. I was disappointed when the Mexican place closed. I don't think they had good enough business. But I think the neighborhood is definitely welcoming and opening to new businesses, particularly if they're going to have a light footprint. And as you said, it doesn't sound look parking will be an issue. North Cambridge

is not nearly an issue as Harvard Square. That's about it. I just wanted to come and give my support.

CONSTANTINE ALEXANDER: Thank you.

The Chair will read into the record, we have letters, first of all from the Planning Board.

"The Planning Board discussed the variance request for the catering business on Massachusetts Avenue and would like to voice support for the use in this location. The space has been used as retail and specifically as a restaurant for a while now. This catering use is very similar to this use and will appear active and visually engaging from the street and will not be detrimental to the pedestrian character of Massachusetts Avenue."

We have a letter from Richard D. Clarey C-l-a-r-e-y, addressed to the Zoning Board of Appeals. "I write as

Chairman of the North Cambridge Stabilization Committee to inform the Board that Mr. Harris made a presentation to our committee last evening and impressed all in attendance with his experience, the substance of his proposal, and his commitment to the community. In addition, we have heard from several abutters and others in favor of his proposal. No one has spoken in opposition. We look forward to the addition of his business to our community."

And then also there's a petition in the file. "We the undersigned neighbors and abutters at 24-47 Massachusetts Avenue wish to express our support on behalf of the application of Robert Harris for a variance to allow him to operate a catering business at this location. We urge the Board of Zoning Appeal to grant the variance." And they're signed by

something more than 25 names. I don't propose to read every name into the record. But certainly there are more than 25 names.

Comments from members of the Board?

BRENDAN SULLIVAN: This is a use variance; is that correct?

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: Both a use variance and a --

BRENDAN SULLIVAN: And a use variance with loading not to be taken lightly. I think, you know, it's really altering and it's sort of determined -- an attorney once gave me some papers here for my edification. And in that it says: A literal enforcement of the zoning would create substantial hardship. It says, hardship is not being reasonably able to use the property for the purposes or in a manner allowed by the municipal zoning requirements due to circumstances

particularly affecting that property. The conditions that establish hardship are diverse. And it goes on basically Cavanaugh versus D. Flamiri (phonetic). Substantial hardship, financial or otherwise, is found under unique circumstances. It is not economically feasible or likely that the locus could be developed in the future for a use permitted by the zoning ordinance or by-law.

So in re-reading that, then you say well, can an as of right use go in there? And I think that the presence of a vacant store sort of says it's going to be very difficult, it's a small store, it's a small space. It doesn't have off-street parking and so it's going to be very difficult to use it for an as of right, what's permitted. And I think, again, whether it be catering or a restaurant, it's really quite similar. It's the

processing of food. But then, again, so isn't it a restaurant. It's not like you're taking raw product and then creating the food stuff. You're taking the food stuff and jazzing it up in a sense. So anyhow, being that said and done, I have no problem with it.

CONSTANTINE ALEXANDER: Tom?

THOMAS SCOTT: I'm all set.

CONSTANTINE ALEXANDER: Mahmood?

MAHMOOD FIROUZBAKHT: I'm all set as well.

CONSTANTINE ALEXANDER: Tim?

TIM HUGHES: I don't have a long speech but I'm good with it.

BRENDAN SULLIVAN: I rely on this quite a bit actually. There are two or three things. I always like to pick out little snip-its.

ATTORNEY JAMES RAFFERTY: Whoever gave that to you, I applaud them.

BRENDAN SULLIVAN: It will come

back to haunt them sometime.

ATTORNEY JAMES RAFFERTY: Well, I didn't know where you were going. But I was noticing your name on the last use variance for the same location, so I was hoping you were going to wind up on the same place you did in 2000 --

BRENDAN SULLIVAN: And you were going to say how can you contradict yourself, Mr. Sullivan?

ATTORNEY JAMES RAFFERTY: I would never say that. I would leave that for others.

CONSTANTINE ALEXANDER: Okay. I think we're ready for a motion.

The Chair moves to grant a variance to the petitioner to operate a catering business with accessory dining at 2447 Massachusetts Avenue.

Such variance would be granted on the basis that a literal enforcement of the provisions of the ordinance would

involve a substantial hardship.

The hardship being that this property is not -- as Mr. Sullivan has pointed out, is small in nature, it does not have parking, and is not really very suitable to most of the uses that are permitted as of right.

That the hardship is owing to special circumstances, and I'll identify those. The shape and the size of the space involved, making it very not usable except for something like a catering business which doesn't attract an awful lot of foot traffic.

And that desired relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this ordinance.

The Chair notes that previously this Board has granted a variance to operate a fast food enterprise at this space. So

food use or restaurant type use is not unknown to this space and has been previously permitted.

We also note that there is substantial community support, both official in terms of the Planning Board, and unofficial in terms of abutters, including a person who has come down to speak to us specifically on this matter.

And that granting relief would in fact enliven the retail aspects of this part of Massachusetts Avenue, and perhaps would provide even a benefit to the neighborhood rather than certainly any detriment.

On the basis of the foregoing, the Chair moves that a variance be granted from both the use restrictions and the loading requirements.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor.

(Alexander, Hughes, Sullivan,
Scott, Firouzbakht.)

CONSTANTINE ALEXANDER: Good luck.

ATTORNEY JAMES RAFFERTY: So
loading would include parking and loading.
I think we cited both just in case that
analysis comes out the wrong way.

CONSTANTINE ALEXANDER: It should
say loading and parking.

ATTORNEY JAMES RAFFERTY: Which is
what the application notes. Thank you.

SEAN O'GRADY: How many square
feet is it?

ATTORNEY JAMES RAFFERTY: 800?

ROBERT HARRIS: 800 to a thousand.

SEAN O'GRADY: You're fine.

ATTORNEY JAMES RAFFERTY: I didn't
know what you do with the rest of the
building if you count up the other --

SEAN O'GRADY: It's weird.

(Whereupon, a discussion was

held off the record.)

(8:25 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9790, One Brattle Square.

Is there anyone here who wishes to be heard on that case?

(No response.)

CONSTANTINE ALEXANDER: The Chair is in receipt of a letter addressed to the Cambridge Zoning Board. "Please let this letter serve as permission requesting a waiver for a continuance to the July 9, 2009 Board of Appeals hearing." And it's signed on behalf of Metro PCS by Taryn T-a-r-y-n M. Patrick.

And I note for the record that a waiver of the time for a decision is

already in the file. July 9th a feasible date?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Chair moves that this case be continued until seven p.m. on July 9th on the condition that the petitioner modify the sign on the premises to reflect the new hearing date.

All those in favor, say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Hughes, Sullivan, Scott, Firouzbakht.)

(Whereupon, a discussion was held off the record.)

(8:30 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9791, 64 Winter Street.

Anyone here wishing to be heard on that?

ANTHONY DAVLIN: Hi, how are you?

CONSTANTINE ALEXANDER: You've been here before. So give us for the record name and address.

ANTHONY DAVLIN: Anthony Davlin, 64 Winter Street, Cambridge, Mass. 02141.

SARAH RICH: And I'm a colleague of Tony's, Sarah Rich.

CONSTANTINE ALEXANDER: Okay. Mr. Davlin, you've been here before. So,

we granted you relief to move your curb cuts and move the parking from one side of the building to the other and now what happened?

ANTHONY DAVLIN: The parking department has refused to allow that to -- for me to go ahead and put the curb cut in based on their traffic rules. And I tried arguing that I'd like to put in lights or gates or pressure pads or basically any and all things to, you know, like I a gallery and stuff, and he's just like, like no. And so --

CONSTANTINE ALEXANDER: I'm sorry. Some of the members of the Board were not sitting on your earlier cases.

ANTHONY DAVLIN: I'm sorry.

CONSTANTINE ALEXANDER: No, no. Why don't you start in the beginning in terms of the structure and what's going on?

ANTHONY DAVLIN: Okay.

In 2003 I bought this one-story concrete block building and filed to build a house on top of it. And in that initial proposal I was going to make a driveway, a curb cut on Sciarappa Street and not use the interior of the garage.

CONSTANTINE ALEXANDER: The garage was in the structure?

ANTHONY DAVLIN: There's a garage, yeah, an existing garage door. And it's got an existing curb cut like 15 feet wide. And part of that whole original proposal was to close up the curb cut on Winter Street, move the parking to Sciarappa Street, since there's like a 10 by 20 foot alley behind the building. That was in my original proposal. There was a picture of the car in the original proposal. And then when it came time to -- and then actually East Cambridge planning team presented this whole

proposal initially to them, about building the house, and moving the curb cut. You know, the neighborhood likes it, because we were going to have a net gain of parking in the neighborhood by closing up the curb cut and moving the garage to the parking to the back. And then it took forever to build the house because it was over budget and ridiculously designed and all that stuff. We built the house finally. And when we went for the curb cut, and then zoning had some concerns about the validity of how explicit we had mentioned the curb cut in the initial application, even though the car had there and stuff like that. So then I went back to zoning and talked about -- explicitly about the curb cut and closing up the curb cut on Winter Street and moving it to Sciarappa Street. And then because I'm not a great manager, a year lapsed and then I didn't use the zoning. So I went

up to zoning again. You guys approved it again. Actually the Planning Board looked at the application this time and expressed some concerns. I talked to them, they endorsed the change to Sciarappa Street. And then I had everyone sign off on the curb cut application. And then went to parking. And then, you know, tried to reason with him or just sort of say let me know what I can do. I even talked about taking a corner out of the building and making it wider, just anything. Just let us, you know. And he's just like no.

CONSTANTINE ALEXANDER: And this is you said regulation. But it's my understanding, and I'm not trying to put words in your mouth, it's just discretionary on their part.

ANTHONY DAVLIN: Yeah.

CONSTANTINE ALEXANDER: It's not like there's something in a rule somewhere written down somewhere what you wanted to

do can't be done.

ANTHONY DAVLIN: I'm not an expert. But I think the -- it's ten feet, and we had, you know, nine-foot, six or nine-foot eight or something. So that was bad. I mean, he could have the discretion. There's plenty of other projects built. I was walking by the Galleria and they have some big planters, and you can almost get hit there. And there are other parking spaces all up and down my street. There's actually a parking space to the entrance to the park. I think it's Guffy (sic), part of that park in East Cambridge. I think the parking is Cambridge. And, you know, it's East Cambridge it's just the way it is.

BRENDAN SULLIVAN: But the parking deficiency that you just mentioned is a zoning regulation not a parking one.

ANTHONY DAVLIN: Right.

BRENDAN SULLIVAN: And, again, are

they required to have a sign off, Sean?

SEAN O'GRADY: We require them to get a sign off which is I'm measuring my words because I want to distinguish that from -- I'm not sure.

BRENDAN SULLIVAN: In other words, they're on the application form?

SEAN O'GRADY: They're on the application form as a sign off.

BRENDAN SULLIVAN: Which is somewhat of a generic form which covers any kind of an application?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: And yet they really don't have any regulatory authority over this particular issue.

SEAN O'GRADY: That's my -- my understanding is that they're relying on the zoning ordinance for their refusal to sign.

BRENDAN SULLIVAN: Which we have varied.

SEAN O'GRADY: Which we have varied.

BRENDAN SULLIVAN: In other words, they can say we're not going to sign off because you are deficient in a dimension which is contrary to the zoning ordinance. We've already dealt with that. We've given you the variance to park there, so that their issue of not signing off has gone away, basically.

CONSTANTINE ALEXANDER: What a fine point. What I think Brendan is saying, if we were to say we're not going to grant you relief tonight because we can't grant you the relief you needed before and you don't need any more relief and you go ahead and move your parking, does traffic have any enforcement mechanism? Can they come in and enjoin them and cite penalties? There are penalties for not complying with the building -- with the zoning laws. But

that's been taken care of as Brendan has pointed out. What could traffic do, do you know?

SEAN O'GRADY: I mean, I'm a little baffled at it myself. I've spoken with traffic and parking, and I can't remember the gentleman's name right now, on this very issue. And he said that he wasn't going to sign it. I said, Well, what are you basing that on? He said, he was basing that on the zoning ordinance and he cited me the section of the zoning ordinance. I pointed out that I didn't think he had the authority to exercise the zoning ordinance. That --

CONSTANTINE ALEXANDER: I think we varied the zoning already by the variance.

SEAN O'GRADY: Even if he did, the Board of Zoning Appeal had already taken that decision out of his hands, certainly in my hands as well. And I did not understand why this couldn't proceed. I

was told that he -- that that's the way it was, that's the way he understood his job, and that he would not be signing off. I had signed off on it, so that's as far as I personally could go.

BRENDAN SULLIVAN: He really needs to take a phone call from Ranjit to Susan.

SEAN O'GRADY: I would think so. I mean again I don't want to express --

BRENDAN SULLIVAN: At an initial level.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: That would be the initial phone call. And if I were in your position, that's -- not to tell you what to do, but I think that's what I would ask for is for the head of one department to talk to the head of the other department. And if I got no satisfaction there, I think I would bump it up.

ANTHONY DAVLIN: I mean, because

why I'm here today is, like, now we're, like, well, we could just move parking to the inside of the building, I have a big curb cut. It's wider. And add a small bedroom as sort of a, you know. Because I never deducted parking off the initial application. So I can just park in the interior of the building and make everyone -- make traffic happy and --

CONSTANTINE ALEXANDER: Now you need zoning relief from us to do that. That's why you're here tonight?

ANTHONY DAVLIN: That's why I'm here tonight.

CONSTANTINE ALEXANDER: You're over the FAR.

ANTHONY DAVLIN: This would actually lower the FAR.

CONSTANTINE ALEXANDER: Because you're taking out the parking.

ANTHONY DAVLIN: Right. Which I never took out in the initial application.

CONSTANTINE ALEXANDER: But even with taking out the parking and putting in the bedroom, you're still over the FAR.

ANTHONY DAVLIN: It's true. I mean the FAR -- I mean, anything in that neighborhood is --

CONSTANTINE ALEXANDER: If you're at .75. You're almost at 1.0 even taking out the garage but adding the bedroom. According this .966.

ANTHONY DAVLIN: Right.

CONSTANTINE ALEXANDER: So it's twice -- not twice. A third more than what's permitted under the zoning laws.

ANTHONY DAVLIN: Right. Right.

CONSTANTINE ALEXANDER: For me, speaking only for myself, the issue here is I hate to see us being forced to change the Zoning By-Law for something we don't have to do it. The traffic department has no authority to do what they're doing.

ANTHONY DAVLIN: Right.

CONSTANTINE ALEXANDER: I know you're the person in the middle.

ANTHONY DAVLIN: Right. I just feel like, you know, this has been a real ordeal, and I'm sort of -- I don't mind, I mean, you know, I've got a big garage door. And, you know, it would be nice to have more space and am I giving up space downstairs? It's just a nice resolution of the whole thing without -- and it's not ask -- you know, I'm building a 72 square foot room. I'm not, like, adding a giant wing to this property or anything. And it's a step back from the property and it's not like -- you know, it's got an eight-foot ceiling. You know, I'm not -- I'm just like saying....

BRENDAN SULLIVAN: I think it would be served better by not having that garage door there.

ANTHONY DAVLIN: I'm sorry?

BRENDAN SULLIVAN: I think the

public is better served by not having that garage there.

ANTHONY DAVLIN: Right.

BRENDAN SULLIVAN: Not having the curb cut there, and then add, what is it, one and a half, two spaces.

ANTHONY DAVLIN: Right. And the other thing, I mean, and this is unrelated. But I make -- I actually make decorative glass. I have a studio variance. And I make this line of glass. So I like having the curb cut. Although there's a -- we can bring in materials to make our work and stuff. And it's good for my work. Like, if I need to drive it -- like, I'm a working -- what's cool is I'm a working glass studio in East Cambridge and it's been like a hundred years since we made glass in East Cambridge. And I'm making glass again in the neighborhood that's known for making glass. It's sort of a, I don't know. I

mean, I'm into that but that's nothing to do with anything.

BRENDAN SULLIVAN: That's okay.

ANTHONY DAVLIN: No, I think so, it would be nice. But I mean, I've tried everything. And I mean people suggested that I could try suing and stuff like that. I'd really prefer not to --

CONSTANTINE ALEXANDER: Well, I think what you could do is frankly ignore the traffic department.

ANTHONY DAVLIN: Well, no, you can't really do that because there's a way of getting a curb cut in the City of Cambridge, and they have to sign off on it to go to the next step which is a public works in order to --

CONSTANTINE ALEXANDER: I see.

ANTHONY DAVLIN: -- in order to receive it. I mean, I could close up the curb cut so it was only one space or

something, but I mean that's --

BRENDAN SULLIVAN: Sean, is the Commissioner appraised of this situation? Is he tuned in on this one?

SEAN O'GRADY: I think he's aware of it sort of, you know, I don't think -- he's got bigger fish on his plate for sure. But I know that he's aware of it.

ANTHONY DAVLIN: I mean, I've spoken with him, you know, at some length today. And he's just like that's what they -- it's up to -- I asked him -- I mean, he said talk to Jim and see what Jim could, you know, because Jim knows a lot. And Jim --

CONSTANTINE ALEXANDER: Jim who?

ANTHONY DAVLIN: Jim Rafferty.

BRENDAN SULLIVAN: Rafferty?

ANTHONY DAVLIN: Yeah, I mean I guess in terms of legally what my op -- you know, a couple months, like, you know, I was thinking of suing and all that. And

I really --

BRENDAN SULLIVAN: You don't want to be confrontational?

ANTHONY DAVLIN: Yeah. I mean, and I think this is something that to would be great if you let me do this. And then longer term, I mean, maybe it's brought up an issue that needs to be addressed institutionally through the City Council, you know, it's something -- it's a governmental thing. I don't know. It's not, you know. I mean, I've been up here, you know -- I don't know.

TIM HUGHES: How long has this been going on?

ANTHONY DAVLIN: Well, the curb cut thing?

TIM HUGHES: Yes.

ANTHONY DAVLIN: Well, I mean I went up finally this year and said, Can I do this? And I was always like -- I think I talked to him before. And I was sort of

afraid of the guy because he's got a lot, you know -- it's like the last -- but it's gone on this year when I finally just went in and asked for the signature. And then I just, you know, it occurred to me it would be nice to add more -- basically add -- basically I have a one bedroom upstairs. I don't have more than one bedroom. It would be nice to have a second bedroom. And I don't mind giving up my parking. If I move my kilns around, I can have an area to put my car. And in the winter it wouldn't be bad and all this stuff.

BRENDAN SULLIVAN: Now, you're talking yourself into it at that point.

ANTHONY DAVLIN: I'm sorry?

BRENDAN SULLIVAN: At this point you're justifying --

ANTHONY DAVLIN: Well, now I'm like sold -- you know, I like the solution. It's a -- it's a --

BRENDAN SULLIVAN: Is there any correspondence?

CONSTANTINE ALEXANDER: Nothing in the file. The file is empty.

BRENDAN SULLIVAN: One part of me sort of says that I really feel as if the relief we granted before made sense, then we should stay with that relief. And that not to, you know, make him -- put him in the middle of this whole thing, I just sort of hate to expand beyond the building and expand upon the relief that we initially granted because I think it made sense at that time. One solution and, again, it may not even fly here, is just continue this and to request that the Commissioner speak to somebody in traffic. And then bring it back at the next meeting whether or not it was even fruitful or not.

CONSTANTINE ALEXANDER: Are you on any time pressures? I know you've been

doing this for a long time.

ANTHONY DAVLIN: I mean, I'd just like to sort of --

CONSTANTINE ALEXANDER: Put it behind you?

ANTHONY DAVLIN: Yeah. I mean, it is lowering the FAR. And I'd really like, I mean obviously, like -- I mean, it's not a big deal, but I've already talked to some -- you know, an architect.

CONSTANTINE ALEXANDER: You're going to have a building that Mr. Sullivan points out is less compliant with the Zoning By-Law with the addition. And from your perspective it's not as desirable as what you had before.

ANTHONY DAVLIN: Well, I'll have a -- I mean, the deal with this building, I mean I think it's a gorgeous contemporary building. I worked with an architect initially. Did a lot of residential projects. And I mean I was the general

contractor, so I know a lot more about building and such. But for the second and third floors there's a one bedroom. It's a one bedroom house. So we really functionally it would be nice if I could add another -- you know, not a big bedroom, but an 8-by-9 room and I could rearrange my -- you know, it's not a bad -- you know, I'm more attached to that now than the driveway since time has gone on, and I thought about it. And it would -- I didn't take that initial deduction on the -- you know, I never took the parking thing. So from my perspective I like what I -- the reason I'm here is, you know, I sort of like -- I've gone past the fighting thing. I've talked about -- it just seems like a real issue. I don't think, you know -- I just would rather just sort of do this, that's why I'm here. I mean, I understand what you're saying, that's why you guys are here, you know,

and I'm here to listen to what you guys say. But I don't know. I mean, the other thing is yeah, there's a practical thing of, I did let this lunatic design a -- I mean, it's not my fault, too. I'm a one bedroom house, but it would be nice to have a second bedroom on a building that size. It looks bigger than it is because of all the decks and stuff and all the open space. So that's sort of my, I don't know, you know, 90 cents.

BRENDAN SULLIVAN: I'm sort of torn here.

CONSTANTINE ALEXANDER: I know. I mean, on one hand I would like to get this resolved on the city level. On the other hand, I mean, this gentleman unfortunately is the person in the middle. And I'm also guided by, you know, by what he wants to do and make his life easier.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: And also

because of relief, although it is zoning relief, it's not significant from the Zoning By-Laws. Were it not for the parking issue, I'm not sure we'd have much of a problem with this.

ANTHONY DAVLIN: Right.

CONSTANTINE ALEXANDER: Now it becomes a matter of principle between us and the traffic department.

ANTHONY DAVLIN: I mean, I think you can use this case regardless. I'd be happy to document -- I have the letter he sent me where he said I'm not going to sign it basically. And I basically said, I'm going to sue you or -- I tried because someone suggested in another department of the city, threaten to sue him. So I was in parking and I said, I'll do what it takes and, you know, I'm like. And he's like, okay, I've heard you. You know, and I got back this packet with thi letter saying, you know, no. You know.

TIM HUGHES: Is there any chance this guy is going to retire in the next week or two?

ANTHONY DAVLIN: He's a young guy.

CONSTANTINE ALEXANDER: Too bad.

TIM HUGHES: Too bad.

CONSTANTINE ALEXANDER: Off the record.

(Whereupon, a discussion was held off the record.)

BRENDAN SULLIVAN: I don't know, I mean, whatever makes sense I think at this point.

MAHMOOD FIROUZBAKHT: One question I have is I, I guess and this is -- I don't know if it's reality, but I guess, if you had the option here and we could say we can solve the parking issue by some, you know, by some administrative move or something on our part and then therefore you could stick with the existing project that you have. Or B, you

can then you -- or B, you proceed to get a variance to do this project that you're proposing for the additional room. Which one would you prefer?

ANTHONY DAVLIN: I prefer B at this point, you know. Because of the defects in my initial design that I have so much open space that -- and, you know, I prefer B at this point.

MAHMOOD FIROUZBAKHT: And nothing to do with the issues you've had with parking?

ANTHONY DAVLIN: Yeah, I'm giving up on the driveway. I'm sort of like sold on this.

SARAH RICH: Yes, so this is the plan B here. So it's the 8 by 9 room from Sciarappa Street looking towards Winter Street here. So it's 8 by 9, the interior dimension is 8 by 9, but the cube is slightly setback to, you know, make the massing feel a little lighter.

BRENDAN SULLIVAN: And initially they were opposed to it because they cited some crazy thing being close to the parkway and it just didn't make sense.

MAHMOOD FIROUZBAKHT: Was the original plan to close out the garage door?

CONSTANTINE ALEXANDER: Yes.

ANTHONY DAVLIN: Well, the garage door was always there, but to close the curb cut.

MAHMOOD FIROUZBAKHT: It was just the curb cut and keep the garage door.

ANTHONY DAVLIN: Keep the garage door because it's good for my art studio. And I guess we just kept it there.

BRENDAN SULLIVAN: You know, to chunk this cube on there.

ANTHONY DAVLIN: This is actually, she drew this, it's actually 16 inches lower than that. The way she drew it is essentially lower.

MAHMOOD FIROUZBAKHT: You know, that actually makes -- that makes a little bit of a difference because I think design-wise, you know, it's sort of like, the layering makes this attractive. And I think, you know, with this additional room is lower in some ways it kind of maintains that staggering --

SARAH RICH: It just feels a little lighter.

MAHMOOD FIROUZBAKHT: Right.

SARAH RICH: Right. And if you look at this angle, there's a lot of this staggering and --

ANTHONY DAVLIN: This is actually -- that's actually the -- see it drops.

BRENDAN SULLIVAN: It's higher than --

SARAH RICH: Yeah, it's lower than the highest part of it.

ANTHONY DAVLIN: You know, like this, you can see this is the new part.

You can see the difference. This is actually a little step.

THOMAS SCOTT: Are there windows? Or is it just this slider?

ANTHONY DAVLIN: It's just the slider with a gate just to match the existing -- there's a window down here. You can't really see it. This is actually it. It shows the proper -- I think it's like almost like a foot and a half lower. But it goes in and then it goes down. I mean these --

SARAH RICH: But the head heights of all of the windows would [align] as they turn the corner.

ANTHONY DAVLIN: Right.

SARAH RICH: So this head height.

ANTHONY DAVLIN: I think we're talking about going four or five inches -- I mean, four or five sizes down.

SARAH RICH: To the roof.

ANTHONY DAVLIN: Yes, to the roof, right. So it goes in and it starts down. I mean, this has a ten foot ceiling and this would have like an eight foot ceiling.

MAHMOOD FIROUZBAKHT: Where do the sliders go out to again?

ANTHONY DAVLIN: They'll just be a gate. I mean, it echos this. There's a slider below it, so it just echos that one system.

SARAH RICH: One other thought to break up the mass would be add like a trellis so it's not as open. Where to me it made this elevation feel a little lighter and less bulky. Introducing more horizontals.

MAHMOOD FIROUZBAKHT: You know, in some respects the notion of keeping the garage door has appealed to me, and sort of in line of what you were talking about, the historical aspect of what you're

doing.

ANTHONY DAVLIN: Right.

MAHMOOD FIROUZBAKHT: And also of that -- of the previous structure there. So I think there's, in my mind, there's some value in kind of maintaining that element of the building. So I can certainly see, you know, some benefit there historically to, you know, keep that element there.

CONSTANTINE ALEXANDER: I think under either proposal you're going to keep the garage door. I think it's a question of keeping the curb cut.

ANTHONY DAVLIN: Right.

CONSTANTINE ALEXANDER: So either one we approve, he's going to keep the garage door.

ANTHONY DAVLIN: Yeah, that's one, we never changed it even though we weren't going to park in there. It's a garage door that's not visible from the street in

the living room. You know, there's an 18-foot garage door or something weird.

SARAH RICH: It's visible in this picture.

CONSTANTINE ALEXANDER: Well.

BRENDAN SULLIVAN: I think we should just let this man get on with his life at this point.

CONSTANTINE ALEXANDER: Speaking for myself, that's exactly what I would do. I mean, it's unfortunate that you have this situation and unfortunately you're here. And if you prefer this plan to the other one even if we gave you some time to get it resolved --

ANTHONY DAVLIN: Yeah.

CONSTANTINE ALEXANDER: -- you said you wanted plan B.

ANTHONY DAVLIN: I still just prefer to do plan B.

CONSTANTINE ALEXANDER: Comments? Any further comments? We ready for a

motion?

TIM HUGHES: I'm ready.

CONSTANTINE ALEXANDER: The Chair moves that a variance be granted to the petitioner to allow him to add a small bedroom, and to change the location of parking to the interior of the building with respect to the premises at 64 Winter Street.

The Chair, on the basis that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. The hardship being is that the parking issues with regard to the property are such that you cannot park, except park within the interior of the building, given the position of the traffic department. And so and because of the need to put parking in the interior of the building, that requires further living space in the other part of the building which results in the

small bedroom that's proposed to be added.

That the hardship is owing to
circumstances relating to --

Off the record.

(Whereupon, a discussion was
held off the record.)

CONSTANTINE ALEXANDER: Are the
special circumstances.

But on the record, the special
circumstances are the nature of the
building. It's a very unusual building.
And such -- to be used for residential
purposes, it requires additional living
space to preserve the historical nature of
the building with regard to parking in the
interior.

And that there would be -- relief
can be granted without substantial
detriment to the public good or nullifying
or substantially derogating from the
intent or purpose of the ordinance.

That being so, because we're talking

a very modest addition in terms of the size of the building. That in fact, the FAR of the building, though over the limit permitted, will be reduced by moving the parking to the interior of the building.

The Chair further notes that there are no letters of opposition from the neighbors. So it seems to have at least implicit neighborhood support.

Such variance would be granted on the condition that the work proceed in accordance with the plans filed by the petitioner, six in nature, six pages. And not otherwise identifiable, but the Chair will initial all six pages.

This is what you've got to file. These are the plans that you're going to live and die by. Because if you modify them, you're going to have to come back again.

ANTHONY DAVLIN: Okay, yep.

CONSTANTINE ALEXANDER: Okay. All

those in favor of granting the variance on that basis say, "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted. I hope we don't see you again.

(Alexander, Hughes, Sullivan, Scott, Firouzbakht.)

(Whereupon, a discussion was held off the record.)

(8:55 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9792, 14-16 Kelly Road.

Is there anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair sees no one. And I believe we have -- we have a waiver of notice. Do we have a letter? Yes, here it is. It's a letter addressed to the BZA.

"Please continue my case for variance hearing regarding 14-16 Kelly Road to June 25th." And it's signed by someone -- the signature I can't recognize, but identifies himself or herself as the agent for the owners.

Is June 25th available?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: The Chair

would also note for the record that there was a waiver of time for a decision already signed by the petitioner.

The Chair moves that this case be continued until seven p.m. on June 25th on the condition that the petitioner modify the sign advertising the time for the hearing.

All those in favor, say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case is continued.

(Alexander, Hughes, Sullivan, Scott, Firouzbakht.)

(Whereupon, a discussion was held off the record.)

(9:00 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9793, 15 Crescent Street.

Is there anyone here wishing to be heard on that matter?

Please come forward. We're keeping a transcript, as we do for all our cases, so you have to give your name and address to the stenographer please.

RICK AMES: Rick Ames, A-m-e-s. Next Phase Studios Architects.

ELIZABETH PEOPLES: Elizabeth Peoples, 15 Crescent Street.

CONSTANTINE ALEXANDER: Before we start, I want to just put this in procedural context. You're basically --

RICK AMES: We're in a little bit of a conundrum.

CONSTANTINE ALEXANDER: Maybe.

I'm not sure what the conundrum's for, but in any event.

This case originally -- well, originally there was a variance granted with respect to this property back in 1998.

RICK AMES: Yeah, there were two. One for the porch and then one for the addition.

CONSTANTINE ALEXANDER: Right. They were one case. There were two things that were done, that's right. Take down -- put an addition and take down a garage.

RICK AMES: Yep.

CONSTANTINE ALEXANDER: And the Board granted relief in 1998. And one of the conditions to the relief that was granted, that the driveway, which -- I'm reading from the decision. That the driveway which lies to the right-hand side of the house be removed and replaced with landscaping. Okay?

And that was a condition of the variance that was granted. Now I got to fast forward to now. And we have a letter that was addressed to the petitioner from Mr. O'Grady on behalf of the Special Services Department. And Mr. O'Grady -- I'm not going to read the whole letter into the file, but the letter makes the point that you did not comply or there was not compliance with the conditions of this variance because the driveway has not been removed, and there was a question about whether the landscaping as required by this decision was complied with. And so we're sitting here, at least as of right now, with a variance that was granted ten years or so ago that has not been complied with, at least in the opinion of the Special Services Department. And with this sitting here you want us to grant you another variance.

RICK AMES: I understand.

CONSTANTINE ALEXANDER: So I think we need to start with the first variance. Speaking only for myself, I'm not predisposed to grant new variances when it doesn't look like the old variances have been complied with. So I want to know why you didn't remove the driveway.

ELIZABETH PEOPLES: We removed all of the asphalt driveway going up to the old --

CONSTANTINE ALEXANDER: Right.

ELIZABETH PEOPLES: -- Cinderblock garage and replaced it with sod and bushes. And then put in a brick -- just like little pad in front of the curb cut that was pre-existing.

CONSTANTINE ALEXANDER: You didn't block off or remove the curb cut?

ELIZABETH PEOPLES: No.

CONSTANTINE ALEXANDER: So, you know, as long as there's a curb cut there's still a driveway there. This is

me, speaking only for myself. And people can drive on the grass. They can drive on these pads that you put there, which to me, I looked at the property, it looks as much like a driveway than a backyard or open space to be used for a backyard. So I'm very -- I return to the basic issue is, why haven't you complied with the variance before? And why should we consider this case for a new variance when we have the old outstanding variance which has not been complied with sitting out there?

RICK AMES: I know procedurally we're going to have to sort our way through it.

CONSTANTINE ALEXANDER: Right.

RICK AMES: I understand that totally. Appreciate that.

CONSTANTINE ALEXANDER: Right.

RICK AMES: And we'd asked for a clarification instead of probably a

modification.

CONSTANTINE ALEXANDER: I should make it clear that we don't have authority to clarify.

RICK AMES: Right.

CONSTANTINE ALEXANDER: We can modify. But clarification is for someone else, not us.

RICK AMES: I think that they felt the intent was and I actually felt that there was discussion about this that we termed it and it was in the agreement as a landscape and not removing a curb cut, although that certainly is implied in other places. My memory. And so some of my counsel was that let's go back and try to remember this, because at the time they had kids in strollers and there was discussion about putting in a small piece of -- you know, that little brick landing pad for the strollers and carriages and where they would land, and that that was

the term landscaping taking out the asphalt. That was my recollection when this first came up last fall. You know, I've gone back and now have gotten transcripts of all four hearings.

And there is one point where you clearly say you'll take out the driveway curb. So....

CONSTANTINE ALEXANDER: Let me get right to the chase --

RICK AMES: This is to the recollection. I don't think there was mal-intent of not finishing that.

CONSTANTINE ALEXANDER: I'm not suggesting that there was mal-intent.

RICK AMES: I think they thought they had the spirit of installing landscape there and that's it.

CONSTANTINE ALEXANDER: Why don't we continue this case and you go ahead and block up that -- and comply with the original variance. Block up the curb cut.

Mr. O'Grady has indicated in his letter that the removal of the other aspect, those brick pads, he's not too concerned about, but the -- he made a determination that the remainder -- the curb cuts continue to create a driveway. And I personally agree with that. So I'm going to throw out the suggestion is that you continue the case until you have finished blocking up that curb cut and effectively removing the driveway. Once you've done that and we have confirmation that you're now in compliance with the 1998 variance, then I'm prepared to consider the 2009 variance. But I'm not prepared to consider it a moment sooner than that.

RICK AMES: Can I put a little bit of context on that overall?

CONSTANTINE ALEXANDER: Go ahead.

RICK AMES: Just a brief chronology. Last July homeowner Jeffrey --

ELIZABETH PEOPLES: My husband.

RICK AMES: -- Peoples. Applied for a permit to rebuild a shed that had been there. I think they got off, you know, I think it was probably deemed something that probably should have been pulled by someone, a licensed builder. And I think there was reservation about the amount of work. There was definitely people went back and forth on that. Jeffrey signed off on it being repair. And it went beyond that in rebuilding it. Again, I don't think -- they weren't trying to increase footprint. They weren't trying to increase the height other than the added new structure because it was an obsolete structure.

Somewhere early September sort of came, you know, this came up that it was crossed the line. Late September we got involved. We tried to figure out a way to referee this through so they could close

it up for the winter. We went a round of trying to figure out how to do it out of right. We could cut it back. We meet all the FAR. You know, so we went a round to try to keep it isolated, cut it back and meet the setbacks so they could just get an out of right instead of a demolition and the whole variance. And probably that was a mistake there. We should have just come for a variance at that point and tried to do it, but we were trying to close it up for the winter. So they were willing to modify it, to do an out of right solution.

I think things were on edge at this point. Sean was very clear about the amount of information we needed on the FAR. We had to go back through and measure up the existing house and all of that to show that the existing structure was compliant. So there was another submittal. I think there was an October

22nd submittal, and there was a November 17th submittal. And basically in the December submittal this issue came up. So it was very clear we were going to have to come before the Board no matter what happened.

And the building basically got tarped up. And I can show you, you know. And this is -- this is the structure. And that's how it sits. I guess -- so, then the decision was, you know, you're going to have to come before the Board. We should just try to rebuild what's there and move forward. We didn't get a clear indication quite honestly. I think Sean hadn't made a final decision on how he was going to come down on that until we submitted. And then we got his letter.

So while I truly understand how you feel this is an outstanding condition, we have several letters, you know, from people that say, you know, the way they

use it and the way it brings relief to the street, you know, they're not fighting for the parking. Mr. Blumenthal who wrote the original letter asking it to be removed said I'm fine with it. But I guess what I'm coming around to is if there were a way to make resolving or the curb cut a condition of this, I really would love to find a way for the barn to get completed without a construction process and then a reapplication of the variance. And if there is a paper way to address the concern very directly, I would love to find that.

CONSTANTINE ALEXANDER: Well, I appreciate the point of view. And again, I'm speaking for myself and I'm going to shut up pretty quickly and let others speak. The problem is we put this condition there eleven years ago and the condition was not satisfied. If we grant relief now on the condition that you plug

up the curb cut, how do we know it's going to happen? I mean this, because of the past history on the premises, I want to see the work corrected. I don't have to worry about a condition before I would deal with the second variance. And I realize that perhaps it causes some dislocation, but this project's been going on for a long while as you indicated.

RICK AMES: I know.

CONSTANTINE ALEXANDER: There were many missteps along the way on behalf -- on your behalf. And, you know, given the fact that we have this problem, given the fact it's non-compliant, given the fact that, you know, you're somewhat compliant in all the delays that happened, not you personally but the project itself, I'm not of mind to consider it, the variance, the new variance tonight. I want proof that you guys are going to live up to the conditions of a variance of the one that

was given ten years ago.

I've said my piece. Any other members of the Board want to be heard?

BRENDAN SULLIVAN: I think you're correct. That -- and there are a few instances, two or three that I can remember where we imposed a condition where we allowed for an addition and that they were going to remove a garage. And they built the addition and have not removed the garage. And, you know, enforcement -- and basically they just said that they couldn't do it. So not that you should pay for the sins of other people, but it has sort of put us a little bit on notice that we really have to take a hard line that conditions of a relief that was granted of a variance should be complied with. At the very least if the curb cut had stayed and the fence had been continued and the brick had been replaced with grass or shrubbery, then that

eliminates the parking. Even if the curb cut were to stay. But it was quite clear, and in the reading of that is quite clear, the agreement was that the parking space was to be abandoned. And as the Chair says it has not been abandoned. So for me to consider this one in any kind of favorable light, I would want to see the fence restored and the brick removed and grass or plantings put in their place.

RICK AMES: Again, you know, I sincerely feel that they thought they had complied with installing landscape there, you know. They removed 50 feet of asphalt out. They installed the brick. I mean, you know, I think it's a misreading of the conditions and I understand that.

BRENDAN SULLIVAN: It's quite clear to me.

RICK AMES: But it's not at all equivocal to leaving up garage that you said you would take down. I mean, they

took action, they spent money. They tried to alter a condition.

BRENDAN SULLIVAN: But it's still a functioning driveway.

RICK AMES: Yes, it is.

BRENDAN SULLIVAN: Okay. So --

RICK AMES: I guess --

BRENDAN SULLIVAN: I don't care how you read the decision, it is still a functioning driveway. And they may have felt that they complied with it by taking up some asphalt, but it is still a functioning driveway. It is a much nicer looking driveway, but it is still a functioning driveway and they did not comply. I don't care how you can put a spin on it, it's just quite clear.

RICK AMES: So --

BRENDAN SULLIVAN: Anyhow. So that would be, I would want to see the condition complied with in the original variance before I would favorably

entertain, grant any more relief on the property.

CONSTANTINE ALEXANDER: Other members wish to be heard?

TIM HUGHES: I -- am I hearing that this shed that you're looking for a variance for has already been built?

RICK AMES: It's been there for --

TIM HUGHES: But I mean it got rebuilt? The repair got put into -- it went farther than a repair to a basic rebuild?

RICK AMES: Yes.

CONSTANTINE ALEXANDER: I think it's fair to say when they went to repair it, they found they couldn't repair it, they had to rebuild it. It was a very old structure.

TIM HUGHES: So where it sits now in its present state it needs a variance for it to stay there?

RICK AMES: Right. It needs a

demolition permit and a rebuild permit.

TIM HUGHES: So just aside from the issue of whether or not the other variance has been complied with, I don't think this other -- the one you're asking for tonight is a slam dunk enough for us to want to even open the case and hear it, you know. I think -- you make it sound like if it wasn't for the driveway thing, this other thing would be easy and it would go through. And it sounds like it's got its own set of problems.

RICK AMES: Oh, no, it needs relief.

CONSTANTINE ALEXANDER: One of the problems is -- I have another problem is that your dimensional form doesn't tell us what relief you want. Your dimensional form for the new variance, it says no change, no change, no change. We got to treat this garage, this rebuilt garage, as a new structure as if you were building

from scratch. And I got to know, we have to know to what extent does that garage that you want to build, that potting shed that you want to build, where you want to build it does not comply with the Zoning By-Law. I don't see anything in the file that tells me that answer.

RICK AMES: I think the, the certified plot plan should have the dimension off the rear line.

CONSTANTINE ALEXANDER: We have a dimensional form here.

RICK AMES: All right.

CONSTANTINE ALEXANDER: You have to fill out. There's no change throughout every item. That's what we look at when we decide --

RICK AMES: It's rear yard setback we will notify all dimensional changes. I mean, you know, all proposed existing changes. I think it was a different try at it. And it was all notated in the ones

that we were trying to do out of right.

So....

CONSTANTINE ALEXANDER: Other members of the Board want to express any views?

THOMAS SCOTT: Just a question about what Brendan was pointing out. Brendan, are you saying that if this -- if the curb cut was removed, then that would satisfy the variance?

BRENDAN SULLIVAN: If --

THOMAS SCOTT: Or is it either/or? Is it this removed or a fence and landscaping? If that were done, then this could stay?

BRENDAN SULLIVAN: It has to be a de facto abandoning of that --

RICK AMES: Off street pack.

THOMAS SCOTT: Of that driveway. Okay.

BRENDAN SULLIVAN: So that if they didn't want to remove the curb cut, at

least put a fence across -- the preclude a vehicle from --

THOMAS SCOTT: Preclude a car from parking there.

BRENDAN SULLIVAN: Exactly.

THOMAS SCOTT: Whose responsibility is the curb repair or removal? Is that a DPW issue? Do they have to coordinate that with the city?

SEAN O'GRADY: While you can cut a curb privately, I'm not sure that you can re-establish a curb privately. I think the city is going to want to have their own granite in there so make to sure that it fits all their requirements. So, my guess, and this is only a guess, is that you would have to petition the DPW to come out and close that curb and that they will charge you to do that.

THOMAS SCOTT: And repair the sidewalk.

CONSTANTINE ALEXANDER: There is

an alternative which is where Tom was going with this.

ELIZABETH PEOPLES: Which is the fence and the --

CONSTANTINE ALEXANDER: The fence and remove the shrubbery.

TIM HUGHES: I'm not sure the fence is an alternative as far as I'm concerned.

SLATER ANDERSON: I think shrubbery.

TIM HUGHES: I think a tree. Because you're not going to drive through a tree, you know? A fence can come and go. You put a fence in, you can take it out again.

BRENDAN SULLIVAN: You ever see the small curbs?

TIM HUGHES: We're looking for landscaping here in a form of a barrier to parking or the curb filled in.

SEAN O'GRADY: The curb is

important from the city's point of view because as long as the curb cut is there, even if there's no driveway there, you're still reserved that what was a public space for your private use. Curb cuts, the space in front of a curb cut, may only be parked in by the owner of that curb cut. So while all of this stuff would prevent cars from pulling off, it would also prevent the public from parking in that spot. And really I think the intent --

CONSTANTINE ALEXANDER: Although you would have to get somebody from the traffic department to give somebody a ticket.

SEAN O'GRADY: They couldn't. The only way to ticket, and again this is my understanding, you know I'm not a professional with traffic and parking, my understanding is that the only way that they ticket blocking of curbs is by the

request of the holder of the curb. That is that they -- you can block curbs, left to right and it's not until they get a call. Because you have a right to park right in front of it or park half in front of it. But if it's your curb, you have the right to do that. And you have the right to allow anybody else that has a parking sticker to use that. But at any time you lift up you phone --

CONSTANTINE ALEXANDER: So from the city's point of view the preferable -- not your point of view, the preferable route would be to take away that curb cut?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Clearly that.

SEAN O'GRADY: Yes. And like you said over time, I mean, these curb cuts have been there for over 100 years. They'll be there hopefully for hundreds of more years. Trees come and go, fences

come and go. Granite's here to stay.

ELIZABETH PEOPLES: Cost? I mean....

RICK AMES: There is definitely.

SEAN O'GRADY: Yes, expect a cost.

RICK AMES: It sounds like even with support from neighbors, abutters, we have letters from abutters all the way around saying they have no problem with it. It sounds like the parking is gone.

ELIZABETH PEOPLES: Right.

RICK AMES: No matter how we skin it.

ELIZABETH PEOPLES: Okay.

RICK AMES: The curb cut, as filled permit-wise, and I think Sean's on the right track, in some municipalities, I'm not sure in Cambridge, you can pay to have it done privately but it's by a bonded contractor and there's a procedure with permitting and it would take time. If people would accept it, I would

recommend the fence removing the brick.
I'm a little hesitant to dictate
landscaping beyond that. But you have to
show some very significant commitment to
removing the off street parking.

ELIZABETH PEOPLES: Okay.

RICK AMES: I mean, just -- that
is access to -- I mean, their lot is a
very large lot on that street. If you're
not familiar with it, it's open space on
that street and it's very active.

ELIZABETH PEOPLES: For kids and
--

RICK AMES: That little open space
there is a ball field right there so that
driveway goes into it. So I would rather
-- and whatever they require, you may have
to do.

ELIZABETH PEOPLES: Okay.

RICK AMES: I'm asking that
they --

ELIZABETH PEOPLES: Bushes.

RICK AMES: Commitment -- I'm not sure trees feels like the right design element.

CONSTANTINE ALEXANDER: Let me try to summarize it. First of all, I'm going to treat this case as a case not heard. Because we never got to the merits of the one, of why you're here tonight, which is the variance of the shed. And that's significant because when you come back, you don't have to get the five of us. Whatever five are sitting that night.

RICK AMES: You can just carry on.

CONSTANTINE ALEXANDER: Yes. We never got into the merits of variance of the shed.

RICK AMES: Understood.

CONSTANTINE ALEXANDER: On the question -- so it's a case not heard.

On the question of removing the driveway once and for all, my suggestion is that we leave it again to the

Inspectional Services Department with the provisor that either certainly removing the curb cut will solve the problem. If you don't do that, then I want something more than, speaking for myself, more than a fence because Mr. Hughes and Mr. Anderson pointed out a fence here today gone tomorrow. Something of a nature that's almost permanent. Trees, shrubbery, and also removal of the brick planters whatever you have in there.

RICK AMES: The pavers.

CONSTANTINE ALEXANDER: That I'll leave to -- you work out with Inspectional Services. But until that's done, and until we're told it's been done, we're not going to hear -- we're going to continue the case on the merits of the shed. So the idea is not to get to the shed tonight.

RICK AMES: Understood.

CONSTANTINE ALEXANDER: Go back

and figure out how -- you've heard the guidelines we've given you as to how you're going to remove that driveway. And then when you do come back, please complete the dimensional form.

RICK AMES: Absolutely.

CONSTANTINE ALEXANDER: On the basis of the new building and what's the problem with the new building from a zoning point of view.

RICK AMES: Absolutely.

BRENDAN SULLIVAN: As far as the clarification, I think that that letter from Sean O'Grady is clarification enough for me, that these should be complied with.

CONSTANTINE ALEXANDER: He's suggesting the curb cut's got to be removed.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: You're saying that --

BRENDAN SULLIVAN: I'm saying that's clarification.

CONSTANTINE ALEXANDER: They have to remove the curb cut.

BRENDAN SULLIVAN: Correct.

SLATER ANDERSON: My thought on the curb cut issue, because I'm sensitive to the cost, the additional cost to you.

ELIZABETH PEOPLES: Yeah.

SLATER ANDERSON: And, Sean, you can weigh in on this if you wish. I don't know if your street's been worked on in the last ten years or if there's work cued up or anything.

ELIZABETH PEOPLES: Yeah, we had the sewer water displacement. It's been done.

SLATER ANDERSON: So the street's been done. That's a problem. That may be a problem to begin with because they often have a moratorium about opening the street up again. And you can't reset a curb

without opening the street up. So you're going to need to go to the Public Works, talk to them about this. I don't know if it has standing or if it's satisfactory that there's some letter or something recorded at the Registry that says when the city -- and does work in the future on Crescent Street that this curb will be removed. Something that memorializes -- I mean, we have it in the variance here. I don't know if that portion of the variance was recorded. Maybe it was. But an agreement with the public works that, you know, in the course of work, it's unfortunate that the street's been done recently. I was hoping that maybe there was future sewer work coming.

ELIZABETH PEOPLES: No.

SLATER ANDERSON: You may have a problem getting it down anyway. I mean, the public works may have to do it. I mean, I don't know. That creates a --

RICK AMES: It's a pretty formidable permitting process.

CONSTANTINE ALEXANDER: I'm a little hesitant. I understand where you're coming from, Mr. Anderson, but it's really severe relief to put on these people to have the sort of expense and delay of removing the curb cut if there are other alternatives to getting to the same result that are less expensive.

RICK AMES: And I -- the DPW permits are long haul --

BRENDAN SULLIVAN: On that part, why don't we get the answers back.

CONSTANTINE ALEXANDER: That's why I would leave it to the Inspectional --

THOMAS SCOTT: Why wouldn't the cost -- I mean, you're either going to spend the money here or you're going to spend money here. We're not asking to you do it in both places.

RICK AMES: Right.

THOMAS SCOTT: So it could be the same cost, put up fences and bushes and tree or whatever that cost is. Maybe it's equivalent to --

CONSTANTINE ALEXANDER: Yes, but Brendan is saying he doesn't want that, the tree or the bush. It's got to be the curb cut or nothing.

RICK AMES: Professionally I'm it will be -- it's several thousand dollars to do a, you know, a lineal piece of closing in that. And the other concern is I have it could be months. It really could be months for permitting.

CONSTANTINE ALEXANDER: Oh, yes.

RICK AMES: And I'm trying to find a way to show good faith that they are trying to finish up something they thought, you know, they weren't trying to be deceptive about. However you want to interpret it. But if there's a way to show good faith that they are trying to

accomplish that.

BRENDAN SULLIVAN: Yes. I think good faith would be go down to the public works and have a conversation with them and get put on their list to have it closed up.

RICK AMES: Closed up.

BRENDAN SULLIVAN: And in the interim to put a fence across there, dig up the brick pavers, and put in some landscaping. And then you can come back to us and say we've put in the fence, we're taking up the brick and we put in the landscaping and we're waiting on the curb cut.

SLATER ANDERSON: Yes. I think we can proceed in parallel. But I think we need something, I think, from public works of substance that says --

RICK AMES: Some documentation that says they've been approached --

SLATER ANDERSON: Yes, that it's

going to happen. And not left to, you know, the way it was eleven years ago and never happened.

RICK AMES: Understood.

BRENDAN SULLIVAN: Go down and see Bill Dwyer.

SLATER ANDERSON: I mean, it's the leverage we have for an enforcement issue.

RICK AMES: I understand.

CONSTANTINE ALEXANDER: Well, we're going to go ahead on that basis. We'll continue the case to a date certain. We're going to figure out what date that's going to be, and that would be a case not heard. And I'm just speaking before I make a motion, and that I would continue it on the basis that to the date certain on the basis that a continuance is said to our satisfaction, whoever is sitting on -- the five of us that night that, the condition is to the 1998 variance were complied with.

RICK AMES: Exactly.

CONSTANTINE ALEXANDER: Which means that the suggestion tonight is there are various ways of doing it, I think clearly the preference would be to have the curb cut removed. But if you can demonstrate to us that you've done other things that are as effective and a substantial cost and delay involved, I think you might get a -- I can't guarantee you -- you might get a receptive hearing when you come back with a continued case saying that you have complied with the conditions. You better be doing something that's permanent, not just a picket fence.

RICK AMES: That shows a good faith commitment to this -- to understand the determination they're having.

ELIZABETH PEOPLES: Okay.

CONSTANTINE ALEXANDER: All right. Is it all right by other members of the Board to proceed on that basis?

How much time do you -- how long should we continue the case for?

RICK AMES: I wouldn't -- I mean, you're every two weeks a month?

CONSTANTINE ALEXANDER: A month? You're not going to be able to put the curb cuts in a month.

RICK AMES: No.

ELIZABETH PEOPLES: Oh, no.

BRENDAN SULLIVAN: That's going to be a process that can be started.

RICK AMES: We can verify with DPW what we're up against to accomplish that and be able to document that.

CONSTANTINE ALEXANDER: I think you're going to need at least a month to put the landscaping in and put the fencing up and remove the brick plates.

RICK AMES: Right. I think if people keep right on it, I'm trying to get the barn while it's still standing.

CONSTANTINE ALEXANDER: So that

would be June 25th. Do we have room on the calendar?

SEAN O'GRADY: That's closed.

CONSTANTINE ALEXANDER: July?
What's the first one in July?

SEAN O'GRADY: We can do July 9th.

CONSTANTINE ALEXANDER: July 9th.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: You can do it earlier, but if you think -- you're not going to be ready, we're going to continue it again. You might as well take the time.

RICK AMES: I'll take care of DPW, you take care of fence and brick.

ELIZABETH PEOPLES: All right.
I'll take care of landscaping.

RICK AMES: So it's either two weeks now or six weeks from now; is that correct?

CONSTANTINE ALEXANDER: That's what it comes down to.

ELIZABETH PEOPLES: Two weeks.

RICK AMES: We have to have done this.

CONSTANTINE ALEXANDER: You have room in two weeks?

SEAN O'GRADY: No, you're closed until six weeks.

CONSTANTINE ALEXANDER: So it has to be six weeks.

ELIZABETH PEOPLES: You don't have anything earlier?

SEAN O'GRADY: You also have to think about further filings.

RICK AMES: Excuse me?

SEAN O'GRADY: You also have to think about further filings.

CONSTANTINE ALEXANDER: Filings?

SEAN O'GRADY: Well, you know, if there's an outstanding, you know, if they decide that they need an appeal or if they decide they need a modification, those are avenues that may be of interest to them.

CONSTANTINE ALEXANDER: What modification? They're going to comply. The idea would be they come down before us and we've been advised by you that the -- or we've been advised -- not by you. We've been advised these are the steps you've taken to bring into compliance the 1998 variance. At that hearing six weeks from now we'll either say yea or nay. If we say yea --

SEAN O'GRADY: But you can't say yea until I say nay. And you can't say overturned until they say appeal.

RICK AMES: Well, can we do that part of it in two weeks? Can we do that in two weeks?

SEAN O'GRADY: That's why we're getting to the issue of formality.

CONSTANTINE ALEXANDER: We can't do it in two weeks. We have no room on the calendar.

RICK AMES: Right, okay, yeah. So

does that mean we have to come twice?

SEAN O'GRADY: I'm not sure how to untangle the web except to say that there's -- that's why I asked so dearly that I not be put in the position of having to write and document that enforcement. But that enforcement is now out there.

RICK AMES: Understood.

SEAN O'GRADY: Right. So now I've got to untangle myself from that.

CONSTANTINE ALEXANDER: But can't they -- and let's explore this for a second. They do what they're going to do. You look at it and in the next six weeks. You look at it and come back and report to us about whether you now want to withdraw your enforcement letter or not.

SEAN O'GRADY: Well, I mean, I know my answer. My answer is that if the curb cut is the driveway, and the curb cut is the thing that gives the parking back

to the city. Those are the things that the city's -- has the interest in. You know, I've already given them a gift by overlooking -- stretching the conception of what landscaping would be. And, you know, I tried to do this informally as often as I could, but now I've got myself backed into a corner.

CONSTANTINE ALEXANDER: Yes, you have.

SEAN O'GRADY: And so, if ultimately the decision is -- the wish is that we don't want to close the curb cut, we want to do something other than that, then I've got to back myself out of the enforcement that I have.

CONSTANTINE ALEXANDER: Or, or alternatively they can take an appeal from your decision.

SEAN O'GRADY: Right.

CONSTANTINE ALEXANDER: And we can look at what they've done and conclude

that we reverse your decision.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: And conclude that they have complied with the conditions.

SEAN O'GRADY: Right. And that's what brought my initial comment of we may have another issue here.

CONSTANTINE ALEXANDER: And now the advertising that you're appealing the enforcement.

If we went that route, how long would it take for them to get on the calendar?

SEAN O'GRADY: Well, if they file an appeal by tomorrow, I believe that they will be heard by July 9th.

SLATER ANDERSON: This is an appeal of your enforcement letter?

SEAN O'GRADY: It would be an appeal of my enforcement letter.

CONSTANTINE ALEXANDER: We'd have

two cases --

SEAN O'GRADY: Or a modification
or however --

RICK AMES: Could we hear them
sequentially that evening?

CONSTANTINE ALEXANDER: Oh, we
would do it that way. That's exactly what
we'll do. We would continue the case, you
would hear them both in the same night.
We first decide the appeal. And if we
reverse Mr. O'Grady and decide that you
have complied with the 1998 variance, then
the next case we would hear would be your
variance request for the shed.

SLATER ANDERSON: However, if they
don't remove, remove the curb cut and we
agree with Mr. O'Grady --

CONSTANTINE ALEXANDER: Then we're
never going to get to the second case.

SLATER ANDERSON: Then we'll never
get to the second case. It sounds like
you should probably file both just to be

safe.

CONSTANTINE ALEXANDER: Yes,
that's what I would say.

SLATER ANDERSON: And you can
always withdraw the curb one if you take
care of the curb.

RICK AMES: Understood.
Understood.

CONSTANTINE ALEXANDER: Exactly.
Any further comment?

BRENDAN SULLIVAN: I would go down
to public works.

RICK AMES: Yeah -- no,
absolutely. We have to close that up.

BRENDAN SULLIVAN: And try to
comply with that letter. That would be my
strong suggestion.

CONSTANTINE ALEXANDER: Well, I
mean that's up to -- it's a point well
taken. I mean, but we can certainly
report back to us in six weeks what's
happening.

RICK AMES: I think we're going to file for two appeals and do the best we can.

CONSTANTINE ALEXANDER: And we may, in six weeks --

RICK AMES: Best case effort to be in compliance.

CONSTANTINE ALEXANDER: And we may say to you sorry, we're going to have to continue further.

RICK AMES: At a minimum we will have a schedule for when they could be in compliance.

ELIZABETH PEOPLES: Based on what DPW says.

RICK AMES: Yeah.

ELIZABETH PEOPLES: So I should just --

RICK AMES: We'll talk outside.

CONSTANTINE ALEXANDER: Do you have a waiver with you, Sean?

SEAN O'GRADY: Yes.

RICK AMES: Thank you for your time.

CONSTANTINE ALEXANDER: Wait, we haven't made the motion yet.

ELIZABETH PEOPLES: I have to sign this?

RICK AMES: This is a non-hearing, never happened.

ELIZABETH PEOPLES: Oh, I'm not signing it.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: You have to sign that otherwise we have to decide the case tonight and we're not going to decide it favorably for you, so you better sign it.

ELIZABETH PEOPLES: So I sign it here?

CONSTANTINE ALEXANDER: Yes.

The Chair moves that this case be continued as a case not heard until seven p.m. on July 9th.

The Chair notes that a waiver of the time for a decision has been signed. The only other requirement is that the sign that's on the property now --

ELIZABETH PEOPLES: Yes.

CONSTANTINE ALEXANDER: -- take a magic marker, cross out tonight's date and put July 9th on there.

ELIZABETH PEOPLES: Okay.

CONSTANTINE ALEXANDER: So the world knows we continued the case to July 9th.

ELIZABETH PEOPLES: Okay.

CONSTANTINE ALEXANDER: And then if you get your appeal in, your filing on his appeal quickly, you will hear that case on July 9th as well.

RICK AMES: Exactly.

CONSTANTINE ALEXANDER: All those in favor of the motion --

RICK AMES: And you won't hear -- we have to have them both in or you won't

hear either.

CONSTANTINE ALEXANDER: Well, until we're satisfied that you complied with the 1998 variance --

RICK AMES: Exactly.

CONSTANTINE ALEXANDER: -- we're not going to hear the other one.

RICK AMES: Exactly.

CONSTANTINE ALEXANDER: All those in favor of continuing the case on the basis, so moved.

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued. See you July 9th.

(Alexander, Hughes, Sullivan, Scott, Firouzbakht.)

RICK AMES: Thank you.

ELIZABETH PEOPLES: Thank you.

(Whereupon, a discussion was held off the record.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the
undersigned Notary Public, certify that:

I am not related to any of the
parties in this matter by blood or
marriage and that I am in no way
interested in the outcome of this matter.

I further certify that the testimony
hereinbefore set forth is a true and
accurate transcription of my stenographic
notes to the best of my knowledge, skill
and ability.

IN WITNESS WHEREOF, I have hereunto
set my hand this 4th day of June 2009.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

**THE FOREGOING CERTIFICATION OF THIS
TRANSCRIPT DOES NOT APPLY TO ANY
REPRODUCTION OF THE SAME BY ANY MEANS**

**UNLESS UNDER THE DIRECT CONTROL AND/OR
DIRECTION OF THE CERTIFYING REPORTER.**